

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

AVKO Educational Research Foundation,  
Donald J McCabe, author,

Plaintiffs AND Counter-Defendants ,

V

Thomas A. Morrow; Wave 3 Learning, Inc;  
Home School Holdings, Inc; Home School,  
Inc;

Defendants and Counter-Plaintiffs.

Case no: 1:11-CV-13381-TLL-CEB

Hon. Thomas L. Ludington

Mag. Charles E. Binder

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**PLAINTIFFS RESPONSE TO DEFENDANTS AFFIRMATIVE DEFENSES AND  
ANSWER TO DEFENDANTS/COUNTER-PLAINTIFFS' COUNTERCLAIM  
CERTIFICATE OF SERVICE**

Plaintiffs/Counter-Defendants (Plaintiffs) respond to Defendants/Counter-Plaintiffs Thomas A Morrow and Wave 3 Learning, Inc (Defendants) affirmative defenses and counterclaim and say:

**II AFFIRMATIVE DEFENSES**

1. Denied. 17 USC §106, §106A(a) gives exclusive rights in copyrighted works to the author as further set forth in § 107-§122. Recordation of copyrights is not mandatory and attachment is not necessary.
2. Denied, See ¶1, above. “The Works” are not in the public domain. Subsequent legislation extended the protection of §304 such that “The Works” are covered. See, Pub. L. No. 93-573, 88 Stat. 1873, the Sonny Bono Copyright Term Extension Act of 1998 and the Copyright Renewal Act of 1992.
3. Denied and request Defendants supply legal proof of their allegation.
4. Denied as false.
5. Denied.
6. Denied
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Neither Admitted or denied.

#### **DEFENDANTS PRAYER**

Defendants request for relief should be denied.

#### **III. ANSWER TO COUNTERCLAIMS**

Plaintiffs/Counter-Defendants (Plaintiffs) respond to Defendants/Counter-Plaintiffs (Defendants) Counter-claim and say:

1. Admitted.
2. Admitted.

3. Admitted.

4. Admitted.

**JURISDICTION AND VENUE**

5. Admitted. In addition, the copyright acts and amendments contained in Title 17 and United States Constitution, Article 1, § 8 also apply.

6. Acquiesced.

7. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

8. Agreed.

**FACTS**

9. Admitted, but it is much more.

10. Exhibit A is admitted.

11. Admitted.

12. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

13. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

14. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

15. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

16. Admitted.

17. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

18. Admitted.

19. Denied. Defendants/Counter-Plaintiffs must prove their allegations. The contract between AVKO and HSH, Inc was for publishing rights only.

20. Admitted.

21. Admitted.

22. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
23. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
24. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
25. Admitted that a cashiers' check was given but otherwise Denied. Defendants/Counter-Plaintiffs must prove their allegations.
26. Admitted.
27. Denied. Defendants/Counter-Plaintiffs must prove their allegations. Regardless, a subscription agreement is not the tender of stock that can be traded on the exchange. The contract did not reference a "subscription" for stock. Regardless, the stock value was negative, as HSH had significant debt, thus, the stocks were, and had been, worthless which fact was known to Morrow, and concealed from McCabe.
28. Denied. Defendants/Counter-Plaintiffs must prove their allegations. See, ¶27.
29. Denied. Defendants/Counter-Plaintiffs must prove their allegations. See, ¶27.
30. Denied. Defendants/Counter-Plaintiffs must prove their allegations. See, ¶27.
31. Denied. Defendants/Counter-Plaintiffs must prove their allegations. See, ¶27.
32. Denied. Defendants/Counter-Plaintiffs must prove their allegations. See, ¶27.
33. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
34. Admitted.
35. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
36. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
37. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
38. Admitted
39. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

40. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
41. Denied. Defendants/Counter-Plaintiffs must prove their allegations. Regardless, Defendants/Counter-Plaintiffs had no vested interest or ownership of sequentialspelling.com as they only had publishing rights.
42. Denied. Defendants/Counter-Plaintiffs must prove their allegations. Regardless, Plaintiffs/Counter-Defendants never had any intention of selling the copyrights.
43. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
44. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
45. Denied. Defendants/Counter-Plaintiffs must prove their allegations and the law in support of their assertion.
46. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
47. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
48. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
49. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
50. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
51. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
52. Denied. Defendants/Counter-Plaintiffs must prove their allegations. Exhibits R-V are missing.
53. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
54. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
55. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
56. Denied in part, admitted in part. Defendants/Counter-Plaintiffs must prove their allegations.

- 57. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 58. Admitted.

**COUNT 1 – FRAUD IN THE INDUCEMENT**

- 59. Plaintiffs/counter-defendants incorporate their answers to ¶¶ 1-58.
- 60. Admitted.
- 61. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 62. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 63. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 64. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 65. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 66. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 67. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 68. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 69. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 70. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 71. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 72. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 73. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 74. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 75. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 76. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 77. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
- 78. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

79. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

**COUNT II – BREACH OF CONTRACT/IMPLIED WARRANTY OF TITLE**

80. Plaintiffs/counter-defendants incorporate their answers to ¶¶ 1-79.

81. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

82. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

83. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

84. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

85. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

86. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

87. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

88. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

89. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

90. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

**COUNT III – UNJUST ENRICHMENT**

91. Plaintiffs/Counter-Defendants incorporate their answers to ¶¶ 1-90.

92. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

93. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

94. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

95. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

96. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

97. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

98. Plaintiffs/counter-defendants incorporate their answers to ¶¶ 1-99.

99. Denied. Defendants/Counter-Plaintiffs must prove their allegations. Further, during this time period, Wave 3 Learning sold copies of “The Works” under wither the AVKO name, or the fraudulent copyrights by Wave 3 Learning and kept the profits, to the detriment of Plaintiffs/Counter-Defendants.

**COUNT IV – DEFAMATION**

100. Plaintiffs/counter-defendants incorporate their answers to ¶¶ 1-99.
101. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
102. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
103. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
104. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
105. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

**COUNT IV – DEFAMATION PER SE**

106. Plaintiffs/counter-defendants incorporate their answers to ¶¶ 1-105
107. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
108. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
109. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
110. Denied. Defendants/Counter-Plaintiffs must prove their allegations.
111. Denied. Defendants/Counter-Plaintiffs must prove their allegations. A copyright infringement is a criminal act and a felony under 17 USC §2319.
112. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

**COUNT VI – TORTIOUS INTERFERENCE WITH A BUSINESS  
RELATIONSHIP OF EXPECTANCY**

113. Plaintiffs/counter-defendants incorporate their answers to ¶¶ 1-112.
114. Denied. Defendants/Counter-Plaintiffs must prove their allegations.



115. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

116. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

117. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

118. Denied. Defendants/Counter-Plaintiffs must prove their allegations.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs/Counter-Defendants respectfully request that the court deny Defendants/Counter-Plaintiffs counterclaims and enter judgment for Plaintiffs/Counter-Defendants as to the counterclaim and the Plaintiffs claims:

1. Enter temporary and permanent injunctive relief prohibiting Wave 3 Learning and Thomas A Morrow from publishing any copies of “The Works” under the false Wave 3 Learning copyright,
2. Enjoin Wave 3 Learning and Thomas A Morrow from the copyright infringement.
3. Award Damages to Plaintiffs/Counter-Defendants for the copyright infringement and breach of contract by Thomas A Morrow.
4. Deny all relief requested by Defendants/Counter-Plaintiffs
5. Award attorney’s fees and costs of this litigation.
6. Grant Plaintiffs/Counter-Defendants whatever other relief is just and proper.

Dated September, 22, 2011.

/s/ Susan Payne Woodrow

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**CERTIFICATE OF SERVICE**

Susan Payne Woodrow certifies that she served a copy of Plaintiff's Response To Affirmative Defenses And Plaintiffs/Counter-Defendants' Answer To Counter Claim upon all counsel of record by ECF filing.

/s/ Susan Payne Woodrow  
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